IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

In re the Marriage of:	)	
	)	
BARBARA HOLLINGSHEAD, fna WILSON,	)	**No. 26593-5-III**
	)	**(consolidated with**
	)	**No. 27225-7-III and**
Appellant,	)	**No. 27501-9-III)**
	)	
and	)	**Division Three**
	)	
ERNEST R. WILSON	)	
	)	
Respondent.	)	**UNPUBLISHED OPINION**

Korsmo, A.C.J. — Barbara Hollingshead has filed three separate appeals encompassing eight different orders entered in her Yakima County dissolution case. She contends the trial court abused its discretion when it ordered unsupervised visitation between Ernest Wilson and the couple's two minor children. She also contends the trial court erred in: (1) twice holding her in contempt for violating the parenting plan, (2) assigning the matter to Judge Lust, and (3) retaining jurisdiction in Yakima County. Both parties request attorney fees and costs on appeal. We conclude that the trial court did not

abuse its considerable discretion and affirm all rulings. We also award attorney fees and costs to Mr. Wilson.

FACTS

The parties married in 1983 and separated in August 2001. They have four children whose current ages are 26, 24, 14, and 11. The decree of legal separation was converted to a decree of dissolution in July 2002. Neither party was represented by counsel in those original proceedings. Hollingshead prepared all of the paperwork for Wilson's signature. Since initiation of this action in 2001, litigation between the parties has been ongoing and contentious.

The original parenting plan designated the mother as primary residential parent of the children. Wilson was allowed only supervised contact with the children. Hollingshead alleged a history of domestic violence, abandonment, emotional abuse and alcohol abuse by Wilson. In October 2002, Wilson petitioned and received one hour of supervised visitation per week. Simultaneously, Hollingshead obtained an order for protection restricting Wilson's contact subject to the visitation schedule. Wilson's visitation continued to be supervised for nearly five years; he was denied additional time in 2003.

On July 28, 2004, Hollingshead filed a notice of intent to relocate from Yakima County. Claiming she was a participant in the Washington State Address Confidentiality Program, she failed to give her new location. Her proposed parenting plan, filed concurrently, contained the same allegations against Wilson as the original parenting plan. It proposed to allow Wilson two hours supervised visitation every other Saturday in Seattle. Wilson, *pro se*, filed an objection to the proposed relocation.

On August 14, 2004, the trial court entered a temporary order granting relocation. Two experts, family counselor June West, and mental health counselor Dr. J. Michael Olivero, were appointed to report to the court regarding the quality of the father's visits with the children. Wilson was granted two hours supervised visitation on alternating Saturdays, pending trial.

Ms. West supervised visitation from 2003 through trial in 2007. She testified that Mr. Wilson had attended every scheduled visit and his relationship with the children improved. When the children were with their father, they appeared to be comfortable and enjoyed their visit. She opined that the parents' negative feelings toward each other appeared to be transmitted to the children. Upon receipt of this "favorable report," Hollingshead sought removal of Ms. West as supervisor on the basis that she was no

longer objective. She also attempted to discredit her professionally and personally.

Dr. Olivero also supervised visitation. He concluded there was never a problem with the relationship between the children and their father. He was clearly critical of Hollingshead and concluded her significant issues with Wilson were negatively impacting the children and resulting in parental alienation. Hollingshead immediately sought his removal as supervisor. As she did with Ms. West, she attacked his credibility by filing licensing information, complaints and past court documents.[1]

On March 20, 2006, Hollingshead was found in contempt for her willful bad faith violation of the residential arrangements. The court specifically found she was "doing everything within her power to alienate these children from their father," and she "is determined to roadblock Mr. Wilson's relationship with his children." Clerk's Papers (CP) (26593-5-III) 144. Wilson's supervised visits were expanded to three hours on alternating Saturdays.

On March 28, 2006, Janice Burke was appointed guardian *ad litem* (GAL). Ms. Burke testified that she did not believe Wilson represented any risk of harm to the children and he should have regular visitation. She also testified there was no evidence of

[1] Consistent with her campaign to savage all who disagreed with her, Hollingshead even discredited one of her daughters after she filed a declaration supporting her father. Clerk's Papers (CP) (26593-5-III) 776-817.

domestic violence during the marriage and all the negative allegations against Wilson arose after separation in 2001. The ultimate recommendation was for alternating weekend visitation and extended time during the summer after six months of bimonthly counseling between Wilson, the children, and Dr. Robert Newell, a clinical psychologist, after Wilson had obtained a drug/alcohol evaluation and followed any recommended treatment.

The petition for relocation, objection to relocation and petition for modification of the parenting plan went to trial on July 10-13, 2007. The trial court granted relocation and modified the parenting plan. The court followed Ms. Burke's recommendations and ordered Mr. Wilson to complete two conditions prior to obtaining unsupervised alternating weekend visitation: (1) family counseling between the children and Wilson with Dr. Newell for the earlier of six months or until Dr. Newell recommended unsupervised visits, and (2) obtain a drug/alcohol evaluation and follow any recommended treatment. Hollingshead timely appealed these orders.

In early 2008, Wilson filed a motion for contempt against Hollingshead for her failure to comply with the parenting plan. On February 15, 2008, the trial court entered an order which, *inter alia*, ordered Hollingshead to "discontinue all support mod.

proceedings in King County until issues before this court are resolved." CP (26593-5-III) 462. The motion for contempt was denied on May 2, 2008 and the trial court ordered unsupervised visits with the children starting immediately, consistent with the parenting plan. Exchanges of the children were to occur at the Easton Diner. Without notice, Hollingshead obtained an order for protection in King County on May 14, 2008 and changed the visitation exchange from Easton to Kent.

On May 23, 2008, the trial court entered an order which provided that Wilson was to have makeup visitation with the children May 23 to May 25, 2008, overruled the King County order, and allowed Hollingshead's counsel to withdraw.

On May 27, 2008, the King County Superior Court entered an order modifying/clarifying jurisdiction of the order for protection and setting a hearing date for June 19, 2008. Three days later, the Yakima County Superior court continued Wilson's motion for contempt and denied Hollingshead's motion for reconsideration of its May 2, 2008 visitation order. The trial court again continued the contempt motion on June 6, 2008 and ordered, among other things, Hollingshead to "ensure that both children transfer to father for his residential time; mother shall not interfere with father's residential time." CP (26593-5-III) 412, 470.

On June 20, 2008, the trial court found Hollingshead in contempt for her willful, bad faith violation of the May 2, 2008 order and parenting plan. The court ordered Hollingshead to pay Wilson's attorney fees, reiterated that Yakima County would maintain continuing exclusive jurisdiction over the parenting plan and required Hollingshead to provide Wilson at least 10 days' notice of any protection order action taken in King County. She also was to set a positive tone with the children for visitation. Hollingshead timely appealed these orders.

On September 5, 2008, without notice, Hollingshead obtained a King County protection order against Wilson's wife, restraining her from contact with the children. Wilson promptly filed for contempt and petitioned for a major modification of the parenting plan. Two weeks later, Judge Lust recused himself from this case. In his recusal, he stated:

> JUDGE LUST: . . . . I don't need argument from Counsel on this, and I'll tell you why. I've read the file. Of course, I've been with the case for a long, long time. I am going to recuse. And the reason I am going to recuse is that I've lost any objectivity with respect to Ms. Hollingshead. I find her incredible and I find that the effect that she's had on these kids is serious and long-lasting. And I just don't think I can hear this matter any longer.
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> . . . .
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> JUDGE LUST: I – I agree with everything you said, Mr. Connaughton. Quite frankly, I'm satisfied with the rulings I've made up until this point. But, the thing that does concern the Court is my lack of I

> think an inability to maintain any objectivity with respect to anything this woman says. And I think for that reason, for no other reason, it needs a fresh look, and I don't relish what I'm doing to another judge in this county certainly.
>
> But, everything is deferred and should be re-noted.

Verbatim Report of Proceedings (VRP) (Sept. 26, 2008) (26593-5-III) 14-17.

On October 15, 2008, Commissioner Swanhart found Hollingshead in contempt "for her willful bad faith violation of the [June 20, 2008] contempt order for filing for a protective order in King County." CP (27501-9-III) 3. In the same order, the trial court also (1) denied the motion for modification as not in the best interests of the children at that time, and (2) denied Hollingshead's motion to change venue in order to prevent Hollingshead from continuing to "manipulate the legal system to the detriment of father." CP (27501-9-III) 4. Hollingshead also timely appealed this contempt order.

ANALYSIS

In this *pro se* appeal, Ms. Hollingshead challenges most of the previously noted actions of the Yakima County Superior Court. We have consolidated her three appeals and will address the issues in this single opinion.

Parenting Plan

We review a trial court's decisions in fashioning a permanent parenting plan for

abuse of discretion. *In re Marriage of Kovacs*, 121 Wn.2d 795, 801, 854 P.2d 629 (1993); *In re Marriage of Jensen-Branch*, 78 Wn. App. 482, 490, 899 P.2d 803 (1995). In order to determine if a trial court has abused its discretion, we look to see if its decision is based on untenable grounds or reasons, or is manifestly unreasonable. *Kovacs*, 121 Wn.2d at 801. The court acts on untenable grounds if its factual findings are unsupported by the record; the court acts for untenable reasons if it has used an incorrect standard, or the facts do not meet the requirements of the correct standard; and the court acts unreasonably if its decision is outside the range of acceptable choices given the facts and the legal standard. *State v. Rundquis*t, 79 Wn. App. 786, 793, 905 P.2d 922 (1995), *review denied*, 129 Wn.2d 1003 (1996).

Parenting plans are individualized decisions that depend upon a wide variety of factors, including "culture, family history, the emotional stability of the parents and children, finances, and any of the other factors that could bear upon the best interests of the children." *In re Parentage of Jannot,* 149 Wn.2d 123, 127, 65 P.3d 664 (2003) (quoting *In re Parentage of Jannot,* 110 Wn. App. 16, 19-20, 37 P.3d 1265 (2002), *aff'd,* 149 Wn.2d 123). The combination of relevant factors and their comparative weight are different in every case and no rule of general applicability could be effectively

constructed. *See Jannot*, 110 Wn. App. at 20. The trial court is better suited than an appellate court to weigh these varied factors on a case-by-case basis. *Id*.; *In re Marriage of Maughan*, 113 Wn. App. 301, 305, 53 P.3d 535 (2002). Parental conduct may only be restricted if the conduct "would endanger the child's physical, mental, or emotional health." *In re Marriage of Cabalquinto*, 43 Wn. App. 518, 519, 718 P.2d 7 (1986) (quoting former RCW 26.09.240); *see* RCW 26.09.191(3); RCW 26.09.002.

Ms. Hollingshead essentially contends that the trial court erred in allowing Mr. Wilson to have unsupervised visitation with the children when he has not proven that he is not a risk of harm to the children. She argues the court should have continued the restrictions on Wilson's visitation based on the alleged history of domestic violence, no proof that he had complied with drug/alcohol treatment, and the children's medical and mental health needs. She also contends the court did not consider the best interests of the children in fashioning the parenting plan. She fails to support her argument with citation to any legal authority. Assignments of error not supported by citation to authority need not be considered by a reviewing court. *Cowiche Canyon Conservancy v. Bosley*, 118 Wn.2d 801, 809, 828 P.2d 549 (1992).

In addition, the record establishes that the trial court did not err or abuse its

discretion. Trial courts are vested with broad discretion in determining the residential placement of a child and are not bound by a GAL or expert's recommendation, but must make their own assessments of the child's best interests. *In re Marriage of Swanson*, 88 Wn. App. 128, 138, 944 P.2d 6 (1997), *review denied*, 134 Wn.2d 1004 (1998); *see also McDaniels v. Carlson*, 108 Wn.2d 299, 312-313, 738 P.2d 254 (1987). Here, the trial court considered all recommendations, the history of the case, the evidence, assessed witness credibility and acted within its discretion.

The matter also was properly before the trial court. Mr. Wilson, *pro se*, objected to the relocation of the children in 2004. He amended his objection after obtaining counsel to specifically request a modification of the parenting plan. RCW 26.09.260(6) provides that the court may modify or adjust a parenting plan pursuant to a proceeding for relocation, without a showing of adequate cause.

The evidence also supported the court's order of unsupervised alternating weekend visitation. There was ample evidence regarding Hollingshead's allegations and the previous restrictions placed on Wilson's contact with the children. The trial court heard testimony from the court-appointed GAL, the children's psychologist, the family and mental health counselors who had supervised the visitations, the parties' two adult

daughters, Ms. Hollingshead's adult daughter and her mother, and the parties. Additionally, there were 135 documents admitted into evidence for the trial court to review.

It is clear from the record and the trial court's letter ruling that the trial court took the testimony and exhibits into consideration in fashioning the parenting plan. CP (26593-5-III) 142-147. The evidence established that Wilson had consistently exercised his visitation and that Hollingshead had gone out of her way to obstruct his visits. Credibility determinations are peculiarly matters for the trier-of-fact and may not be second-guessed by an appellate court. *Thorndike v. Hesperian Orchards, Inc.*, 54 Wn.2d 570, 572, 575, 343 P.2d 183 (1959); *Quinn v. Cherry Lane Auto Plaza, Inc.*, 153 Wn. App. 710, 717, 225 P.3d 266 (2009), *review denied*, 168 Wn.2d 1041 (2010). The evidence presented at trial supported the trial court's order. There is no showing the trial court abused its discretion by expanding Mr. Wilson's visitation privileges.

Affidavit of Prejudice

The next issue is whether it was error for Judge Lust to hear this case despite the filing of an affidavit of prejudice. There is no constitutional right to the removal of a judge; the right is created by statute. *In re the Marriage of Lemon*, 59 Wn. App. 568,

572, 799 P.2d 748 (1990). A party or attorney has one opportunity to file an affidavit of prejudice against a judge before whom an action is pending, provided that the "motion and affidavit is filed and called to the attention of the judge" before the judge has made any discretionary ruling. RCW 4.12.050; *In re Estate of Williams*, 48 Wn.2d 313, 314, 293 P.2d 392 (1956). The mere existence of an affidavit of prejudice in the court file is not sufficient to divest a judge of authority to proceed. *State v. Smith*, 13 Wn. App. 859, 860-861, 539 P.2d 101, *review denied,* 86 Wn.2d 1002 (1975). Failure to bring an affidavit of prejudice to the trial court's attention constitutes a waiver. *Id.* at 861; *Bargreen v. Little*, 27 Wn.2d 128, 132-133, 177 P.2d 85 (1947). A litigant cannot stay silent to preserve an issue for possible future appeal. *See City of Seattle v. Harclaon*, 56 Wn.2d 596, 597, 354 P.2d 928 (1960).

Hollingshead filed an affidavit of prejudice against Judge Lust in April 2006. Ten months later, the case was preassigned to Judge Lust, and the first motion was heard on March 2, 2007. Hollingshead never objected to the assignment nor did she call the court's attention to the previously filed affidavit of prejudice. By failing to call the judge's attention to the affidavit of prejudice, she waived her objection. *Bargreen*, 27 Wn.2d at 132-133. There also was no evidence that Judge Lust was biased or impartial.[2]

[2] Once he believed himself no longer objective, Judge Lust properly recused

Ms. Hollingshead has not established error.

Retention of Jurisdiction

The next issue is whether the court properly retained jurisdiction in Yakima County. Ms. Hollingshead again fails to cite authority concerning the trial court retaining jurisdiction. Accordingly, we need not consider this assignment of error. *Cowiche Canyon Conservancy*, 118 Wn.2d at 809.

Even if there had been proper argument, there was no error because "[e]very action or proceeding to change, modify . . . any final order . . . regarding the parenting plan or child support for the minor children of the marriage . . . may be brought in the county where the minor children are then residing, *or* in the court in which the final order . . . was entered." RCW 26.09.280 (emphasis added). Venue is proper in Yakima County.

A particular judge cannot retain jurisdiction over a case because a county's superior court judges each have identical authority. *See State v. Caughlan*, 40 Wn.2d 729, 732, 246 P.2d 485 (1952). But, especially in family law cases, judges routinely retain responsibility for subsequent matters that arise between the parties. *See In re Marriage of Adler*, 131 Wn. App. 717, 725, 129 P.3d 293 (2006), *review denied*, 158

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himself.

Wn.2d 1026 (2007); *In re Marriage of Possinger*, 105 Wn. App. 326, 19 P.3d 1109, *review denied*, 145 Wn.2d 1008 (2001); *In re Marriage of Little*, 96 Wn.2d 183, 194, 634 P.2d 498 (1981). This promotes judicial economy for the court and continuity for the parties. While a trial judge may not retain exclusive jurisdiction over parties, a court does not err by expressing a desire to maintain responsibility for subsequent matters. *Id.*

The record clearly establishes that the trial court retained jurisdiction in Yakima County because the parties were engaged in contentious long-term litigation over the parenting plan. Hollingshead had consistently abused the process by seeking protective orders from King County to avoid complying with the Yakima County orders and concurrently filing petitions for child support in King County while the relocation and modification proceedings were pending in Yakima County. It was clear the trial court retained jurisdiction in Yakima County to not only review the efficacy of its decision, but to maintain judicial economy and to control the abuses of the judicial process evident in Ms. Hollingshead's manipulation of the legal system. *See In re Marriage of True*, 104 Wn. App. 291, 298, 16 P.3d 646 (2000); *In re Marriage of Ochsner*, 47 Wn. App. 520, 527, 736 P.2d 292, *review denied*, 108 Wn.2d 1027 (1987). Nothing in the modification statute, RCW 26.09.170, precludes this sort of procedure.

Additionally, our courts have the "inherent power to control the conduct of litigants who impede the orderly conduct of proceedings." *Yurtis v. Phipps*, 143 Wn. App. 680, 693, 181 P.3d 849, *review denied*, 164 Wn.2d 1037 (2008); *see also* RCW 2.28.010(3). A court therefore has discretion to place reasonable restrictions on any party who abuses the judicial process. *In re Marriage of Giordano*, 57 Wn. App. 74, 78, 787 P.2d 51 (1990). It was reasonable for Yakima County to retain jurisdiction over this matter.[3]

Stay Pending Appeal

Repeating her allegations against Mr. Wilson, Ms. Hollingshead argues the rulings should be stayed pending appeal and all unsupervised visitation immediately be suspended. The record fails to support any of her contentions and she again cites no legal authority.

A stay of proceedings without substantiation or authority would only serve to delay and obstruct the children's relationship with their father. *See Cooper v. Hindley*, 70 Wash. 331, 126 P. 916 (1912). It is a discretionary decision to stay a decree pending appeal. *State ex rel. Burrows v. Superior Court*, 43 Wash. 225, 228, 86 P. 632 (1906).

[3] As of the date of the last order in this appeal (October 15, 2008), the Yakima County Court file consisted of 18 rolls.

Ms. Hollingshead fails to establish any abuse of discretion in the trial court's refusal to address her motion for a stay pending appeal.

Contempt Rulings

Finally, we address whether the trial court erred in finding Hollingshead in contempt on two occasions, June 20, 2008 and October 15, 2008. Whether contempt is warranted in a particular case is within the sound discretion of the court. *In re Marriage of Thompson*, 97 Wn. App. 873, 877, 988 P.2d 499 (1999). We will not disturb the trial court's decision on contempt absent a manifest abuse of discretion. *In re Marriage of James*, 79 Wn. App. 436, 439-440, 903 P.2d 470 (1995).

> If, based on all the facts and circumstances, the court finds after hearing that the parent, in bad faith, has not complied with the order establishing residential provisions for the child, the court shall find the parent in contempt of court.

RCW 26.09.160(2)(b). When the trial court weighs competing documentary evidence to make credibility determinations regarding bad faith, we review the findings for substantial evidence. *In re Marriage of Rideout*, 150 Wn.2d 337, 351-352, 77 P.3d 1174 (2003).

Here, the court ordered unsupervised visitation between Wilson and the children to occur on alternating weekends commencing May 2, 2008 with the exchanges to occur at

the Easton Diner in Easton. Two days before the next visitation, without notice, Hollingshead obtained a King County protection order changing the exchanges from Easton to Kent. There was substantial evidence to support the trial court's finding that Hollingshead willfully and in bad faith violated the Yakima County order of May 2, 2008.

The order of June 20, 2008 specifically provided that Hollingshead was to provide advance notice to Wilson of any protection order action taken in King County. Without notice, on September 5, 2008, she obtained a temporary protection order against Wilson's wife, Nancy, prohibiting her from being within 500 feet of any location the children might be. The petition states:

> AN EMERGENCY EXISTS as described in the statement below. I need a temporary restraining order issued immediately without notice to the respondent until a hearing to avoid great or irreparable harm.

CP (27501-9-III) 347. The trial court did not err when it specifically found that Ms. Hollingshead willfully and in bad faith violated the court's June 20, 2008 order when she obtained the King County protective order without notice. There was substantial evidence to support the finding of contempt on October 15, 2008.

Attorney Fees

Mr. Wilson requests attorney fees and costs on appeal pursuant to RAP 18.1, RCW 26.09.160, RCW 7.21.030, and *Rideout*, 150 Wn.2d 337. We agree that his requests are warranted.

On appeal, "[w]e may affirm the [lower] court on any grounds established by the pleadings and supported by the record." *Truck Ins. Exch. v. VanPort Homes, Inc*., 147 Wn.2d 751, 766, 58 P.3d 276 (2002). RCW 26.09.160(1) provides:

> An attempt by a parent . . . to refuse to perform the duties provided in the parenting plan . . . shall be deemed bad faith and shall be punished by the court by holding the party in contempt of court and by *awarding to the aggrieved party reasonable attorneys' fees and costs incidental in bringing a motion for contempt of court*.

(Emphasis added.) RCW 26.09.160(2)(b)(ii) provides:

> If, based on all the facts and circumstances, the court finds after hearing that the parent, in bad faith, *has not complied with the order establishing residential provisions for the child*, the court shall find the parent in contempt of court. Upon a finding of contempt, the court shall order:
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> . . . .
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> (ii) The parent to pay, to the moving party, *all court costs and reasonable attorneys' fees incurred as a result of the noncompliance*, and any reasonable expenses incurred in locating or returning a child.

(Emphasis added.) These statutes have application here. All of the proceedings on appeal have focused on Hollingshead's noncompliance with the parenting plan. A party is entitled to an award of attorney fees on appeal to the extent the fees relate to the issue

of contempt. *Rideout*, 150 Wn.2d at 359.

Additionally, a trial court may consider whether additional legal fees were caused by one party's intransigence and award attorney fees on that basis. *Eide v. Eide*, 1 Wn. App. 440, 445, 462 P.2d 562 (1969). "When intransigence is established, the financial resources of the spouse seeking the award are irrelevant." *In re Marriage of Morrow*, 53 Wn. App. 579, 590, 770 P.2d 197 (1989). Awards of attorney fees based upon the intransigence of one party have been granted when the party engaged in "foot-dragging" and as an "obstructionist," as in *Eide*, 1 Wn. App. at 445; when a party filed repeated motions which were unnecessary, as in *Chapman v. Perera*, 41 Wn. App. 444, 455-456, 704 P.2d 1224, *review denied*, 104 Wn.2d 1020 (1985); or simply when one party made the trial unduly difficult and increased legal costs by his or her actions, as in *Morrow*, 53 Wn. App. at 591.

Hollingshead's actions have been willful, in bad faith, spiteful and vexatious. She is ordered to pay Wilson's reasonable attorney fees and costs on appeal in accordance with RCW 26.09.160(1), (2)(b)(ii).

CONCLUSION

The trial court did not abuse its considerable discretion in fashioning the parenting

plan and in ordering unsupervised visitation between Wilson and his children. The court did not err in twice finding Hollingshead in contempt for her willful and bad faith violation of the court's orders. Wilson is entitled to attorney fees and costs. We affirm the trial court orders in their entirety.

A majority of the panel has determined this opinion will not be printed in the Washington Appellate Reports, but it will be filed for public record pursuant to RCW 2.06.040.

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Korsmo, A.C.J.

WE CONCUR:

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Sweeney, J.

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Siddoway, J.